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Revising the Special Autonomy Law for Papua¹: Challenges and Possibilities

Aisah Putri Budiatri*²

EXECUTIVE SUMMARY

- In 2001, the Indonesian Government passed the Special Autonomy Law (Law No. 21/2001) allowing the central government to transfer large funds into both Papua and West Papua Provinces to end the conflict there. After almost two decades, it seems the law has not been effective in solving the conflict.

- Since the special autonomy fund is expected to end in 2021, the government and the legislative assembly have put the revision of the Special Autonomy Law on the priority list of the 2020 national legislation programme (Program Legislasi Nasional/Prolegnas).

- The amendment process is an opportunity for the government to improve its strategies in resolving the problems in Papua, but there is risk of missteps which could exacerbate the conflict.

- The government will have to adopt a dialogue approach to ensure inclusivity, in order to enhance the sense of legitimacy and ownership of the amendment process for the Papuan and non-Papuan stakeholders. However, this could be difficult to achieve given the government’s apparent desire to pass the amendments quickly.

* Guest writer, Aisah Putri Budiatri, is Researcher in the Centre for Political Studies, Indonesian Institute of Sciences (P2P LIPI) and a member of the Papuan Studies Team.
INTRODUCTION

The Special Autonomy Law for Papua (Law No.21/2001) was initiated in 1999, during BJ Habibie’s presidency. The law was later enacted in 2001 by President Megawati Sukarnoputri. Since then, the Indonesian government has been using this piece of legislation to resolve the conflict in Papua that began six decades ago.

The law has not proven to be effective. After almost two decades, the House of Representative (Dewan Perwakilan Rakyat/DPR) now plans a revision of the law under the 2020 national legislation programme. This revision is expected to amend the way the Special Autonomy Law has been implemented so far. This article addresses what actions the Indonesian government should take and urges for the use of the dialogue approach during the amendment process, to ensure that the new policy gains stronger legitimacy.

THE INEFFECTIVENESS OF SPECIAL AUTONOMY IN PAPUA

With the end of the Suharto authoritarian era in 1998, Habibie took over as president of Indonesia and started the reform era. In response to international pressure to resolve human rights violation, and after a meeting between the president and the ‘Team 100’ consisting of Papuan leaders on 26 February 1999, the government decided to adopt the autonomy model to resolve the Papua conflict. This approach was very different from the security approach undertaken by the Suharto government. A Special Autonomy Law for Papua was stipulated to be the legal basis in resolving the Papua problem. This law was developed by the provincial government, academicians and activists in Papua, under the coordination of J.P. Solossa (Governor of Papua, 2000-2005). The issues covered are extensive. It addresses the roots of the conflict mapped by the Indonesian Institute of Sciences (Lembaga Ilmu Pengetahuan Indonesia/LIPI), including the differing standpoints between the Papuans and the Indonesian government about the political status and the history of Papua integration; political violence and human rights violations; failures in socio-economic development; and the marginalization and discrimination of Papuans (see table 1). As such, the law should ideally have been able to resolve the conflict.
Table 1. \textit{Sections of Papua’s Special Autonomy Law that Address the Main Roots of Conflict.}

<table>
<thead>
<tr>
<th>Roots of Papua's Problems</th>
<th>History and Political Status</th>
<th>Marginalization and Discrimination</th>
<th>Failure of Development</th>
<th>Violence and Human Rights Violations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sections in the Papua’s Special Autonomy Law (No. 21/2001) that address the roots of conflict</strong></td>
<td>• Chapter XII Article 46 about the formation of a Truth and Reconciliation Commission (KKR)</td>
<td>• Chapter V about the form and structure of government (Local Government, Local Parliament, and Papuan People’s Assembly)</td>
<td>• Chapter IX about Finance (Special Autonomy Fund for 20 years for Papua and other funds for the development of Papua)</td>
<td>• Chapter II, Article 2 about regional symbols</td>
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<td></td>
<td>• Chapter VII about local parties</td>
<td>• Chapter XI about the protection of the rights of indigenous peoples</td>
<td>• Chapter X about the Economy (Economic business for the development of Papua)</td>
<td>• Chapter XI about the protection of the rights of indigenous peoples</td>
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<td></td>
<td>• Chapter XVIII about population and employment</td>
<td>• Chapter XX about social issues</td>
<td>• Chapter XVI about education and culture</td>
<td>• Chapter XII about human rights</td>
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<td></td>
<td>• Chapter XX about social issues</td>
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<td>• Chapter XVII about health</td>
<td>• Chapter XV about religion</td>
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<td></td>
<td>• Chapter XIX about sustainable development and environment</td>
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<td>• Chapter XVIII about population and employment</td>
<td>• Chapter XVI about education and culture</td>
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</table>


In practice, the Special Autonomy Law has been ineffective due to two aspects: weak legitimacy and poor implementation.\footnote{5} Not all parties in Jakarta and Papua were involved in the negotiation process or accepted the law. For example, some in Jakarta feared that the law would become a bridge for Papuan independence, so the government enacted Government Regulation No.77/2014 which deals with regional symbols that collide with the Special Autonomy Law agenda.\footnote{6} On the Papuan side, though the draft was designed in Papua, not all interest groups in the province were involved in the process, especially those that were pro-independence. These had rejected the law even before the law was passed.\footnote{7}

The poor implementation of the Special Autonomy Law was caused by factors such as the absence of a grand design, overlapping laws, lack of technical regulations, lack of good governance, and corruption.\footnote{8} For instance, due to the lack of technical regulations, many issues mandated by the law have either not been implemented or not been optimally implemented as yet. The lack of technical regulations, at both the national and regional levels, hindered the creation of the Commission for Truth and Reconciliation (\textit{Komisi Kebenaran dan Rekonsiliasi}/KKR), local political parties, and regional symbols.

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Due to the law’s ineffectiveness, the conflict in Papua continues to this day, hindering development in the province. In the last ten years, the Papua and West Papua Provinces have the lowest Human Development Index (HDI) scores in the country, at 54.45-60.06 and 59.6-63.74 (BPS-Indonesia Statistics, 2010-2018), respectively. These scores are below the national average of 66.53 -71.39.9 These provinces also have the highest poverty rates in Indonesia. Based on the BPS (Badan Pusat Statistik) data in March 2019, poverty rates in Papua and West Papua Provinces are 27.53% and 22.17%, respectively, much higher than the national poverty rate of 9.41%.10 Moreover, a study conducted by the Asia Foundation and LIPI in 2018 found that the HDI score and the poverty rate of a city/regency in Papua tended to correlate to the proportion of Indigenous Papuans, popularly known as Orang Asli Papua (OAP) found in the population. Where the proportion of Indigenous Papuans exceeds 60 % of the total population, the HDI score falls rapidly and the poverty rate rises (see figure 1).11

Figure 1. Human Development Index and Poverty Rate Based on the Proportion of Papuans and Non-Papuans Populations in Papua and West Papua Provinces

Note: Red dots denote cities (kota) and districts (kabupaten) in the West Papua Province, while the blue dots denote cities and districts in the Papua Province.


The poor welfare conditions in Papua appear despite large fund transfers from the central government to the province through the special autonomy fund and additional infrastructure funds (Dana Tambahan Infrastruktur/DTI). A total of IDR 105.2 trillion (USD7.7 billion) was disbursed to Papua from 2002 to 2018—IDR 75.3 trillion (USD 5.5 billion) for the Papua Province, and IDR29.3 trillion (USD 2.2 billion) for the West Papua Province.12

Unlike other provinces, Papua and West Papua received extra state-funding due to their special autonomy status. In accordance with Article 34 of the Law No. 21/2001, Papua and West Papua Provinces are entitled to receive a special autonomy fund, amounting to 2% of the national general allocation fund (Dana Alokasi Umum/DAU). These funds are primarily intended to finance education and health. Furthermore, there are also additional funds
available for infrastructure development. Each year, the Indonesian government and DPR determine the budget allocation based on the proposals forwarded by the provincial governments.

The ineffectiveness of the Special Autonomy Law in improving living conditions in Papua has caused deep disappointment within the Indigenous Papuans community. This has been expressed through numerous protests, and a rejection of the law. On 12 August 2005 and 18 June 2010, they symbolically “returned” the law to the central government. In 2005, over 13,000 Papuans, led by the Papuan Customary Council (Dewan Adat Papua/DAP), carried a coffin to the parliament of Papua to symbolize the failure of the Special Autonomy Law. In 2010, the Democracy Forum (Forum Demokrasi/Fordem) held a long march to the parliament to show further displeasure with the law.13

REVISION TO THE LAW

The ineffectiveness of the Special Autonomy Law has encouraged the Indonesian government to attempt amending it. The first effort to substantially revise the law was carried out in 2014, during Susilo Bambang Yudhoyono’s tenure. The provincial government, under Lukas Enembe, drafted a revision to the law, called ‘Special Autonomy Plus.’ In the draft bill, the provincial governments proposed several changes, including broader authority for the provinces, and a more detailed distribution of the special autonomy fund. Although the parliament for the 2009-2014 period was scheduled to discuss the bill, that failed to take place because the central government argued that several articles in the bill needed to be discussed further, including the number of Papuan People’s Assembly (Majelis Rakyat Papua/MRP) institutions that are to represent Papuans in Papua and West Papua, the formation of local political parties, and an increase in the allocation of special autonomy funds.14

Five years after the ‘Special Autonomy Plus’ failed, the agenda to revise Papua’s Special Autonomy Law now enters a new phase. This time, the proposed revision is led by the central government and has been included as one of the draft laws to be discussed in the 2020 Prolegnas. Moreover, the Minister of Home Affairs, Tito Karnavian, has given the assurance that the revision of the Special Autonomy Law must be completed within a year. The revision is urgent because the special autonomy fund will end in 2021 (article 34 paragraph 6, Law No. 21/2021).15

The ending of the special autonomy fund in 2021 will have a significant impact on governance in Papua. The fund constitutes the largest portion of Papua’s regional government budget, on average contributing 47.11% to the provincial budget during the period of 2011 to 2015. This was much higher than the contribution from the general allocation fund (Dana Alokasi Umum/DAU), which was at about 20.14%. The contribution of the province’s own-source revenue (Pendapatan Asli Daerah/PAD) was less than 10% of the provincial budget.16 Given this dependency, the exit strategy to be decided in the upcoming amendment process will play a significant role in the future of Papua.

Though the ‘special autonomy fund’ is a major issue, the revisions to the law need to cover other critical aspects as well, including the formation of a Truth and Reconciliation Commission (KKR), local parties, and regional symbols. As mentioned, the provision of
the large special autonomy fund since the early 2000s had not succeeded in solving the complex development problems facing Papua. Thus, even if the revised law allows the special autonomy fund to run beyond 2021, it will not resolve Papua’s root problems. This is why the government and the parliament will need to undertake a comprehensive revision that includes social and political aspects that often resist compromise.

A comprehensive revision needs to be made by evaluating how the law was implemented in the past. A good lesson can be taken from the process of preparing Law No.11/2006 on Aceh government, which replaced the old version of Special Autonomy Law for Aceh (Law No 18/2001) after the Aceh peace agreement, known as Helsinki MoU, was signed in 2005.\textsuperscript{17} To prevent a failure similar to the Special Autonomy Law for Aceh, the lawmakers have been studying the implementation failures of the Special Autonomy Law in Papua. In discovering that the failure to form KKR and local parties was due to the lack of technical regulations, they have come up with a more comprehensive regulation to allow for this to happen.\textsuperscript{18}

Re-examining the complex problems involved in the implementation of Papua’s special autonomy and adjusting the law accordingly will offer new opportunities for resolving the problems in Papua. Moreover, the government has opened up a chance for further discussion not only on the revision of the special autonomy fund but also on other aspects, in particular those proposed in the 2014 Special Autonomy Plus, such as issues of authority, the fiscal-financial framework, and development problems.\textsuperscript{19} However, given the complexity of the issues, the one-year time frame set by the government to revise the law is an unrealistic target. The government needs to consider what is the best way to comprehensively discuss the law within such a limited time.

Another important matter concerning the revision of the law is to achieve strong legitimacy for it in the eyes of both the Papuans and the government. Legitimacy is critical. The weak process used in the previous deliberation of the law has to be rectified in the current amendment process, for the revision to be fully accepted and recognized by the stakeholders in Papua and Jakarta.

Given recent political dynamics in Papua, however, the problem of weak legitimacy may re-emerge in this revision process. The idea to revise the law is one of the demands the 61 Papuan leaders brought forth at the invitation of President Joko Widodo on 10 September 2019. The central government had in fact been asking for inputs from the local governments for this law revision since July 2019.\textsuperscript{20} However, some parties in Papua have been upset over the fact that the revision proposed by the central government has suddenly become a priority bill, even before coordination and intensive discussions between Jakarta and Papua have taken place.\textsuperscript{21} Boy Markus Dawir, a member of the provincial parliament in Papua, views this to be a one-sided measure undertaken by the central government.\textsuperscript{22} This hints at a potential problem regarding the legitimacy of the ongoing revision process.

PROMOTING EFFECTIVE DIALOGUE

The saying “better late than never” aptly illustrates the revision of the Special Autonomy Law for Papua, finally happening after years of ineffective implementation of that law. There is now an opportunity to resolve the long-time problems in Papua through an effective
law revision. However, this will require a comprehensive and legitimate process involving key stakeholders in Jakarta and Papua. Both aspects are equally important to the revision process. If one aspect is missing, the new law may be perceived as another top-down policy from the central government. This will then lead to the mistakes of the past, thus further reducing Papuan trust in the government. If this happens, the conflicts will worsen.

To make the revised law comprehensive and legitimate, the government will do well to use dialogue as a new approach. This will guarantee inclusiveness in a process where various interest groups in Jakarta and Papua identify problems and find solutions that can be adopted into the revised law. A successful dialogue will create a sense of ownership, and provide strong legitimacy for the new law.  

Previously, the dialogue was a taboo when it came to resolving the Papua conflict. The Joko “Jokowi” Widodo government however broke tradition and accepted this approach. This was done in 2017. President Jokowi has also appointed the persons-in-charge (PIC) to prepare the dialogue, including Neles Tebay (a Coordinator of Papua Peace Network at that time), Teten Masduki (a Chief of the Presidential Staff Office at that time), and Wiranto (a Coordinating Minister for Political, Legal and Security Affairs at that time). However, various obstacles impeded this preparation process, such as the appointment of Neles Tebay, a PIC from outside of the formal government structure, without an official decree, the lack of specific allocation funds to prepare the dialogue, and then the passing of Neles Tebay in 2019, among other things. As a result, no effective dialogue has been executed. It is therefore all the more timely now for the Jokowi’s government to show its commitment to the use of a serious dialogue to end the Papua conflict.

In 2016, LIPI recommended some proposals on how this dialogue can be conducted, which included: (1) a meeting between the president and the three pillars of Papua (the provincial governments of Papua and West Papua, the provincial parliaments of Papua and West Papua (DPRP/PB), and the People’s Assembly of Papua and West Papua (MRP/PB), (2) an internal dialogue between elements within the government including ministries and government agencies, (3) an internal dialogue between interest groups in Papua, (4) a sectoral dialogue that addresses specific issues (e.g. health and education issues), and (5) a national dialogue attended by the government and elements of Papua’s civil societies.

However, the format of dialogue, including those specifically concerning the Special Autonomy Law, needs to be agreed upon between parties such as the central government, the local governments, DPRP/PB, MRP/PB, and various groups of Papuans and migrants in Papua. To begin this process, the president needs to equip the persons-in-charge with an official decree and with formal authority to organise the series of dialogues. Only then can amendment bring about an effective conflict resolution for Papua.

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1 The term of ‘Papua’ used in this paper refers to the definition of ‘The Land of Papua’ that administratively covers the Provinces of Papua and West Papua.

2 I greatly acknowledge the valuable discussions I had with Dr. Adriana Elisabeth and Dr. Riris Katharina regarding the revision of Special Autonomy Law for Papua.
Pembangunan,
Seldadyo, Aisah Putri and Septi Satriani, "Tanah Papua: Infrast
growth are 0.5 and 1.5 times the total growth that ha
decomposition is
Penduduk Kabupaten/Kota 2010
population projection database provided by Central Bureau of Statistics (BPS) (Series of
The simulations using a population growth scenario do not result in sharp changes
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Maret 2019 No. 56/07/Th.XXII, p. 9.
revisi Otsus Papua,” (accessed on February 3, 2020); Based on a presentation delivered by Dr. Drs.
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Badan Pusat Statistik, Profil Kemiskinan di Indonesia Maret 2019 No. 56/07/Th.XXII, p. 9.
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The data of Papuans (Orang Asli Papua/OAP) refer to the 2010 Indonesian Population Census. The simulations using a population growth scenario do not result in sharp changes in Papuan population composition. This scenario calculates an annual total population growth rate based on a population projection database provided by Central Bureau of Statistics (BPS) (Series of Proyeksi Penduduk Kabupaten/Kota 2010-2020, for Papua and West Papua). Furthermore, the decomposition is constructed on an assumption that Papuans’ and non-Papuans’ (Non-OAP) growth are 0.5 and 1.5 times the total growth that had been calculated previously. Harry Seldadyo, Aisah Putri and Septi Satriani, “Tanah Papua: Infrastruktur, Perubahan, dan Pembangunan,” Laporan Penelitian TAF dan LIPI (unpublished paper), 2018, p. 20.
The value of Rupiah is calculated in US Dollars to make it easier for readers to understand it in a world money standard. This calculation was carried out on January 23, 2020 when 1 USD was worth 13,634 IDR. Special autonomy fund data are based on a presentation delivered by Thomas Umbu Pati TB, M.Si, (from Ministry of Home Affairs), in LIPI, on August 12, 2019.

16 Based on a presentation delivered by Titus Emanuel Adopene Hery Dosinaen, Regional Secretary of Papua Province at that time, in Jakarta, on June 21, 2019.
18 Based on a discussion with anonymous resource person, who drafted the Aceh Government Law, in Jakarta, on July 26, 2019. See also Law No. 11/2006 Chapter VII, Chapter XI, Chapter XXXIV, and Chapter XXXIX.


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